



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 599**

IN THE MATTER OF PAUL GAUDETTE

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and Paul Gaudette ("Gaudette") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gaudette. The Commission has concluded its inquiry and, on December 15, 1999, found reasonable cause to believe that Gaudette violated G.L. c. 268A.

The Commission and Gaudette now agree to the following findings of fact and conclusions of law:

1. Gaudette was, during the time relevant, the building inspector for the town of Dracut. As such, Gaudette was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. The building inspector's duties include issuing building permits based on submitted applications and plans, and enforcing the zoning and building codes.

3. On July 26, 1996, Gaudette and his wife bought lot 33A on Diamond Drive in Dracut (number 42 Diamond Drive) from Charles Kleczkowski ("Kleczkowski") for \$65,000. The lot contained 150,718 square feet of land (3.31 acres)

4. Kleczkowski was then the treasurer, agent/clerk and sole director of K&K Equipment Inc., a development company located in Dracut. Kleczkowski's wife, Lucille, was the president of the corporation. Kleczkowski and/or K&K Equipment were in the process of developing a number of properties in Dracut, including a large subdivision known as Glenwood Estates.

5. At the time of the closing, Gaudette and his wife made a \$1,000 deposit on the property and borrowed \$64,000 from K&K Equipment to cover the balance of the purchase price. Gaudette and his wife also borrowed \$110,000 as a construction loan from the Jeanne D'Arc Credit Union, secured by a first mortgage on 42 Diamond Drive. K&K Equipment's \$64,000 loan to purchase the property was secured by a second mortgage on the property, with interest due at the rate of 9½% per annum. Payment in full (principal and interest) was due September 30, 1996.

6. In order to obtain a construction loan from the Jeanne D'Arc Credit Union, Gaudette had to expend certain sums that were not refundable even if Gaudette were unable to obtain a

building permit and had to cancel the construction loan.^{1/} First, Gaudette had to pay for an initial credit report (\$50), an initial appraisal (about \$250), and a flood-zone determination certificate (\$25). In addition, Gaudette had to pay various attorneys' fees and loan closing costs to record the credit union's lien. Gaudette's total expenditure was at least \$350.

7. On or about August 21, 1996, Gaudette submitted an application for a building permit to construct a new home at 42 Diamond Drive. He identified himself as the contractor on the job. Gaudette estimated the square footage of the house to be 2,200 and the cost of the work to be \$85,000.^{2/}

8. In his capacity as building inspector, Gaudette also reviewed the building plans for compliance with the building and zoning codes, and found that the plans were in compliance.^{3/} Thereafter, Gaudette signed the application, thereby authorizing the issuance of a building permit to himself. Gaudette also set the fee for the permit at \$425 (equal to 0.5% of the construction costs). Thereafter, Gaudette forwarded the building plans to the fire department for approval.^{4/}

9. In 1996, the formula for calculating building permit fees was \$45 times the square footage of the building, times \$5/1000 (\$.005). Accordingly, the fee for Gaudette's building permit should have been \$495 (\$45 x 2200 x \$.005), not \$425.

10. On August 22, 1996, Gaudette in his capacity as building inspector signed the excavation and foundation permit for 42 Diamond Drive.

11. On or about September 26, 1996, a certified plot plan for 42 Diamond Drive was submitted to the building department based on the foundation having been poured. The plan demonstrated that the location of the foundation met the applicable zoning requirements. Thereafter, Gaudette as building inspector issued himself the building permit to begin construction on the house.

12. On September 30, 1996, the Gaudettes and K&K Equipment amended the terms of the mortgage note securing the \$64,000 loan. According to the amendment, the balance of principal and interest was now payable in full on or before the date on which the Gaudettes took occupancy of the property at 42 Diamond Drive. At the same time, the Gaudettes paid K&K Equipment \$50,000, which K&K Equipment acknowledged as payment of a portion of the outstanding principal. The principal balance due was then \$14,000.

13. Gaudette completed construction on 42 Diamond Drive in April 1997, and took occupancy shortly thereafter.^{5/}

14. K&K Equipment discharged the (second) mortgage on 42 Diamond Drive on April 18, 1997.

15. On June 10, 1997, Gaudette and his wife issued two personal checks on their joint bank account to Charles Kleczkowski. One check was for \$9,000 and the other was for \$5,000; they were numbered sequentially and signed by Gaudette's wife. Kleczkowski deposited both checks on June 25, 1997.

16. The Gaudettes repaid a total of \$64,000 on their loan: \$50,000 to K&K Equipment and \$14,000 to Charles Kleczkowski directly; the Gaudettes paid no interest on their loan. Apparently, Kleczkowski has a history of not charging interest on certain loans.

17. During the time that Gaudette had a mortgage arrangement with K&K Equipment, Gaudette acted as building inspector on at least twenty matters that were of significant interest to K&K Equipment and/or its principals, Charles and Lucille Kleczkowski. These matters included issuing building permits and approving final inspections for houses within the Glenwood Estates subdivision, as well as for other properties owned and/or developed by K&K Equipment and its principals.

18. Except as otherwise permitted, G.L. c. 268A, §19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he has a financial interest.^{6/}

19. The building inspector's decisions to issue an excavation and foundation permit and a subsequent building permit for 42 Diamond Drive were particular matters.^{7/}

20. As the building inspector for Dracut, Gaudette participated^{8/} personally and substantially in the decisions to issue the excavation and foundation permit and the building permit for 42 Diamond Drive by reviewing the application and plans, setting the building permit fee and issuing the permits.

21. Gaudette had a financial interest in the particular matters because, as the owner of 42 Diamond Drive and applicant for the permits, he was obligated to pay the permit fee as established by the building inspector. In fact, as Gaudette was able to establish his own permit fee, he set the fee at \$425 when it should have been calculated at \$495, based on the square footage of the house.

22. Moreover, Gaudette had a financial interest in the decisions to issue the permits because he had expended considerable sums of money (at least \$350) to obtain a construction loan from the credit union. Those sums were not refundable even if Gaudette had been unable to get a building permit.

23. Finally, Gaudette had a financial interest in the decisions to issue the permits because obtaining a building permit would ensure that he had paid \$65,000 for a buildable lot and not just a vacant parcel of land.

24. Gaudette had knowledge of his own financial interests in the decisions to issue the permits when he acted as building inspector in issuing them. He knew that he would be obligated to pay the stated permit fee, he knew that he had expended nonrefundable sums of money to obtain his construction loan (which loan he would have to cancel if he could not obtain his building permit), and he knew that his securing a building permit would ensure his being able to build a house on the lot he had purchased.

25. Therefore, by participating as building inspector in the decisions to issue the permits, particular matters in which to his knowledge he had financial interests, Gaudette violated §19.^{9/}

26. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.^{10/}

27. By acting as building inspector on matters of interest to K&K Equipment and/or its principals while having a \$64,000 loan/mortgage arrangement with K&K Equipment and after repaying the loan without any interest, Gaudette acted in a manner that would cause a reasonable person to conclude that K&K Equipment and/or its principals could unduly enjoy Gaudette's favor in the performance of his official duties. By doing so, Gaudette violated §23(b)(3)^{11/}

In view of the foregoing violations of G.L. c. 268A by Gaudette, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Gaudette:

(1) that Gaudette pay to the Commission the sum of two thousand dollars (\$2,000) as a civil penalty for violating §§19 and 23(b)(3); and

(2) that Gaudette waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 16, 1999

^{1/}According to Gaudette, he knew that it was a buildable lot which complied with the Dracut zoning bylaw when he and his wife purchased it.

^{2/}In fact, the square footage was approximately 2,150, just under the estimated 2,200.

^{3/}There is no evidence that the lot was not a valid building lot or that the plans were not in compliance.

^{4/}According to Gaudette, this was his usual practice with respect to building permit applications, so long as the cost estimates were within normal limits.

^{5/}Gaudette did not perform the inspections on his own house; those inspections were performed by other building inspectors acting on behalf of the town.

^{6/}None of the §19 exemptions apply here.

^{7/}"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general

court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

8/“Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

9/Gaudette maintains that the lot was in fact a valid building lot and that he was entitled to a building permit for the lot. The Commission makes no finding as to these facts. In any event, Gaudette’s purported compliance with the zoning bylaws does not avoid his violation of the conflict of interest law, G.L. c. 268A, as set forth in this Agreement. The §19 violation addresses solely the impropriety of Gaudette’s issuing permits to himself.

10/Section 23(b)(3) further provides, “It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.” Gaudette made no such disclosure.

11/This Agreement does not address any gratuity issues regarding whether Gaudette paid fair market value for his property or should have paid interest on the \$64,000 loan. Those matters are currently under review by other government offices.